Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

Term, 1975

No. 75-250

City of Charlotte, a municipal corporation, the Charlotte City Council, the governing legislative body of the City of Charlotte, and Fred Alexander, James Whittington, Milton Short, Joe Withrow, Pat Locke, Kenneth R. Harris, and Neil C. Williams, as members of the Charlotte City Council and individually,

Petitioners

v.

Local 660, International Association of Fire-Fighters, an unincorporated labor organization, and R. L. Middleton, W. M. Brawley, D. F. Black, M. L. Knight and R. D. McCall, as officers of Local 660 and individually,

Respondents

****

On Writ of Certiorari
to the United States Court of Appeals
For the Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

****

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IN THE

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City of Charlotte, a municipal corporation, the Charlotte City Council, the governing legislative body of the City of Charlotte, et al,

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v.

Local 660, International Association of Firefighters, an unincorporated labor organization, et al,

Respondents

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

****

The petitioners, City of Charlotte and its Councilmen, respectfully petition this Honorable Court for a writ of certiorari to review a judgment and opinion of the Court of Appeals for the Fourth Circuit, rendered in this cause on June 17, 1975.

I. OPINIONS DELIVERED IN COURTS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is not reported. The opinion and order of the United States District Court for the Western District of North Carolina is reported in 381 F. Supp. 500. Copies of these opinions are appended to this petition.

II. JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fourth Circuit was made and entered on June 17, 1975. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254(1).

III. QUESTIONS PRESENTED

The questions presented for review are:

1. Have petitioners, by following a policy of allowing only payroll withholdings which benefit all of its employees, established a rational basis for denying union dues check off to approximately 351 city-employed firemen?

2. Is it mandatory for a municipality, absent a statute requiring it, to afford voluntary union dues check off for the benefit of a union because it permits withholdings for other items such as medical and life insurance, savings plans and a charity organization which are available to all of its employees?

3. Does North Carolina General Statute § 95-98 prohibit a municipality from checking off union dues for the benefit of a union, when the statute declares illegal and against public policy any contract or agreement between a municipality and a labor union if, by that contract, the union becomes bargaining agent for any employee?

4. Were the Findings of Fact affirmed by the Fourth Circuit Court supported by the evidence?

IV. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Amendments to the U. S. Constitution involved in this case are the First Amendment cited in Volume I, page XLVI of the U. S. Code, the Ninth Amendment cited in Volume I, page XLVII of the U. S. Code, and the Fourteenth Amendment cited in Volume I, page XLVII of the U. S. Code which provide as follows:

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT IX.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

AMENDMENT XIV.

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Jurisdiction at the District Court level was invoked under 28 U.S.C., Sections 1331 and 1343, and Title 42 of the U. S. Code, Section 1983 which provide as follows:

28 U. S. Code 1331

(a) The district court shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum of value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

28 U. S. Code 1343

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U. S. Code 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceedings for redress.

The statute of the State of North Carolina which is involved in this case is cited in Volume 2C, Section 95-98 at page 689 of the General Statutes of North Carolina which provides as follows:

North Carolina General Statute 95-98

Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.

Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality

of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect.

V. STATEMENT OF CASE

This proceeding arises in the United States Court of Appeals for the Fourth Circuit, and seeks a review of a decision handed down by that Court on June 17, 1975. (A-3). Respondents commenced a civil action in the United States District Court for the Western District of North Carolina on October 2, 1973 seeking declaratory and injunctive relief. Respondents also sought to redress the deprivation of rights, privileges and immunities secured by the First and Ninth Amendments and by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

In the Complaint, Respondents contended that Petitioners, City of Charlotte, a municipal corporation in the State of North Carolina, and its City Councilmen had engaged in a pattern and practice of refusing to withhold or check off union dues from members of Local 660 who are employees of the City of Charlotte's Fire Department. Respondents further contended that the City of Charlotte had approved the withholding of monies from employee wages for such items as medical and life insurance payments, savings plans and charitable contributions. The complaint alleged that this was arbitrary and capricious and violated respondents' rights under the

First Amendment to the United States Constitution to freedom of speech, freedom of assembly, including their right to organize, petition and to bargain for rights and privileges of employment, as well as a violation or rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment. Jurisdiction of the District Court was invoked pursuant to 28 U.S.C. 1331, 1343, and 42 U.S.C. 1983.

The respondents submitted to the District Court, by affidavits, that two insurance companies had been unwilling and unable to offer a group life insurance plan to Local 660 and its members until the members were afforded voluntary dues check off by the City of Charlotte. Respondents contended that the City's refusal to grant check off severely and materially impinged on their rights to associate together for other lawful purposes.

The U. S. District Court, the Honorable James B. McMillan, Judge Presiding, held a hearing on February 1, 1974 on certain evidence submitted by affidavits and interrogatories, and requested that the parties file additional evidence as to the number of Charlotte firemen employed and the number of employed firemen belonging to the union, as well as information concerning the items for which the City voluntarily withheld deductions from the wages of its employees.

By affidavit, one of the respondents submitted to the Court that there were 351 dues

paying members of Local 660 out of a work force of 543 uniformed firemen.

Evidence was submitted to the District Court by the petitioners that the only monies withheld from wages at the request of employees, other than those specifically required by law, were monies for savings plans, (credit unions, U. S. Savings Bonds and a deferred compensation plan), a community charity (United Way), which consolidates most of the local charities for Mecklenburg and Union Counties, medical and life insurance premiums, and the Firemens' Voluntary Pledge Fund, which is not a regular deduction but is withheld from the wages of firemen voluntarily only upon the death of an employed fireman for the benefit of his survivors. In addition, by affidavits of the Personnel Director and the City Manager, information was submitted to the Court on the City's policy for determining allowable withholdings.

No written standards or guidelines exist for determining which requests for withholdings will be permitted, but the Charlotte City Council has established a policy through practice and has adhered generally to this policy, that no requests for withholding would be permitted which were not available, at option, to all of the employees of the City of Charlotte.

Since 1968, dues check off has been denied to the American Federation of State,

County and Municipal Employees, Local 660, International Association of Firefighters, the North Carolina Labor Alliance, Retail, Wholesale and Department Store Union and the North Carolina State Firemen's Association, as well as numerous commercial organizations.

A hearing was held in District Court on July 8, 1974 on the cross-motions for summary judgment, and on September 5, 1974, Findings of Fact, Conclusions of Law and an Order was entered dismissing Local 660 as a party plaintiff and granting individual plaintiffs' motion for summary judgment. The District Court ruled that the City of Charlotte and its Councilmen were enjoined from refusing to withhold money from the individual plaintiffs' wages to be paid to Local 660 so long as the City continued "without clearly stated and fair standards, to withhold monies from the paychecks of City employees for other purposes, organizations and entities not specifically required by law..." (A- 14). The District Court's dismissal of Local 660 recognized that the Fourteenth Amendment under the facts of the case, applied primarily to the individual plaintiffs.

Petitioners appealed this action to the U. S. Court of Appeals for the Fourth Circuit, which rendered its opinion on June 17, 1975 affirming the judgment of the District Court. A stay of the mandate was granted by the U. S. Court of Appeals for the Fourth Circuit on July 21, 1975 pending this application for a writ of certiorari. (A- 1).

VI. ARGUMENT

The opinion of the United States Court of Appeals for the Fourth Circuit should be reviewed because it has decided an important question of federal law which has not been, but should be, settled by this Court, and, petitioner respectfully submits, is in conflict with an interpretation of a North Carolina State Statute.

The Court below has rendered an opinion on a First Amendment right which will have a far-reaching effect in the field of employer-employee relations and labor negotiations, both in the public and private sector of North Carolina and other parts of the United States. This decision has equated the granting of payroll withholdings or deductions for employee fringe benefits to the granting of a request for union dues check off for the benefit of a labor union, absent a statute or agreement with a union requiring it.

If the Fourth Circuit's opinion (A- 3), should be sustained, then both public and private employers utilizing unionized employees would be required to either remove union dues check off as an item in the collective bargaining process and grant dues check off as a matter of right, or, in the alternative, refuse to render its employees any benefit programs which would result in the withholding of employees' pay.

The decision of the Fourth Circuit permits petitioners to adopt reasonable, objective

standards based upon a rational classification for determining which requests for withholding will be granted or denied and move to reopen the case in District Court. (A- 6). The City of Charlotte respectfully contends that it has already established a rational basis for determining permitted withholdings by granting only those requests which would be available to and benefit all of the employees of the City, and not just special interest groups. The withholding of pay for various employee programs is regarded as a fringe benefit and each request is considered to determine the number of overall employees which will benefit by the withholding, and whether or not such a benefit would outweigh the administrative costs of implementing such a program.

At the time of the litigation in District Court, there were 351 dues paying members of Local 660 employed as firemen out of a total of 543 uniformed firemen. Granting dues check off for this special group of employees does not fall within the guidelines of the City's policy of permitting only deductions available to and for the benefit of all of its employees. Petitioner submits that a request for union dues check off for the benefit of a union is so inherently different from a request for a deduction for medical or life insurance or any other one of the withholdings allowed, that, in itself, it creates a different classification.

The Fourth Circuit and District Courts have decided this issue on the basis of equal protection as guaranteed by the Constitution.

Justice Stewart in Shapiro v. Thompson, 394 U.S. 618, 22 L Ed 2d 600, 89 S. Ct. 1322 (1969), articulates the limits of the fundamental rights rationale employed by this Court:

> The Court today does not 'pick' out particular human activities, characterize them as 'fundamental', and give them protection ... To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives that right no less protection than the constitution itself demands. Ib. at page 620.

It is therefore respectfully submitted that this petition should be reviewed to decide if union dues check off is a "fundamental right" under the provisions of the Fourteenth Amendment.

In delivering the opinion in San Antonio School District v. Rodriguez 411 U.S. 1, 36 L Ed 2d 16, 93 S. Ct. 1278 (1973), Justice Powell stated:

> It is not in the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Ib. at page 43.

Petitioners respectfully contend that the lower courts' decisions have improperly created a substantive constitutional right.

Union dues check off has always been a negotiated item and a part of the collective bargaining process, and absent a statute or labor contract requiring check off, it is not a matter of right. In National Relations Board v. Reed and Prince Mfg. Co., 205 F. 2d 131, (C.A. 1), (1953), at page 136 the United States Court of Appeals for the First Circuit said:

> On the check-off proposal, the company registered its opposition, mainly on the ground that this was not a proper subject of collective bargaining. In this the company was mistaken.

In Porter Co. v. NLRB, 396 U.S. 817, 24 L Ed 2d 69, 90 S. Ct. 79 (1969), the U. S. Supreme Court granted certiorari to consider whether the NLRB Board under the circumstances of the case had the power to remedy the unfair labor practice by requiring the company to agree to check off the dues of the workers. The Supreme Court stated the Board had the power under the Labor Management Relations Act to require employers and employees to negotiate; however, "it was without power to compel a company or a union to agree to any substantive contractual provision of a collective bargaining agreement." Although the City of Charlotte is not covered under the provisions of the National Labor Relations Act, this point is made to show that even Federal legislation does not compel a company to check off dues.

North Carolina General Statute 95-98 prohibits contracts between governmental agencies or unit, including cities, and labor unions as bargaining agents for public employees. The City of Charlotte contends that an agreement for union dues check off between a city employee, who is a member of a labor union,and the city is a type of contract to which the union is a third party beneficiary.

In 1969, in a written opinion, the North Carolina Attorney General's Office stated:

> N.C.G.S. 95-98 prohibits and forbids any agreement or contract between your city or municipality (Charlotte) and any labor union or trade organization as bargaining agency for any public employees. This would be or amount to an agreement between you and the union to check off and pay over to the union the union dues from the wages of these employees of the City of Charlotte. ... A check off agreement whereby union dues are deducted from the employees' wages is a function or segment of collective bargaining. Since the check off agreement deals with a segment or function of collective bargaining with the labor union, it is expressly prohibited by G. S. 95-98... and the City of Charlotte has no authority of law and is expressly prohibited from operating or making

> any deductions or check-off from its employees' wages for the purposes of paying union dues or for that matter any other fee or assessments that pertain to the business of the labor union or labor organization. N. C. Attorney General Reports, 1968-70, Vol. 40, at page 591.

The Fourth Circuit Court stated in its opinion that authorities cited by petitioners are distinguishable, either because the request for withholding arose and was denied in the context of collective bargaining or because a rational classification was established. (A-5). In this action, denial of union dues did not arise in the context of collective bargaining because North Carolina State law prohibits union contracts with municipalities. The Courts have in the past drawn a distinction in denying dues check off between unions having a bargaining agreement and those not having such a contract, and between a majority union and a minority union. Bauch v. City of New York, 237 N.E. 2d 211, 21 N.Y. 2d 599, (1968). However, the City of Charlotte has been placed in the untenable position by this decision of the Fourth Circuit Court of having to grant union dues check off without a union contract.

Petitioner City of Charlotte has a substantial interest in denying union dues check off so that it could in the future, if necessary, be an item for collective bargaining if the City is ever

placed in a bargaining position. For the District and Fourth Circuit Courts, to, by judicial edict, remove union dues check off from the category of those items normally bargained for collectively is, in effect, to deny the City's right to bargain for this item. This, in itself, will affect municipalities all over the United States. The City's administration has a duty to maintain stability with respect to its employees and their organization, and, insofar as possible, to avoid the devastation caused by work stoppages and strikes. These are major responsibilities of the City, and whether or not the denial of dues check off is the best way to further these objectives is not relevant. Certainly, it can be argued that a denial of dues check off is reasonably related to the attainment of this permissible and worthwhile objective.

VII. CONCLUSION

Wherefore, Petitioners City of Charlotte and its Councilmen, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit in the above-entitled case.

For the reasons set out above, and because the question of granting union dues check off has never been decided out of the context of collective bargaining agreements, it is respectfully submitted that this petition should be granted.

City Attorney's Office
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600 E. Trade Street
Charlotte, North Carolina
704-374-2254

By: Henry W. Underhill, Jr.
Henry W. Underhill, Jr.

W. A. Watts
Counsel for Petitioners

AFFIDAVIT CERTIFYING SERVICE

I, W. A. Watts, an attorney in the office of the City Attorney for the City of Charlotte, North Carolina, attorneys of record for The City of Charlotte and its City Councilman, Petitioners in this action, herein depose and say that on the 14th day of August, 1975, I served three (3) copies of the foregoing Petition for Writ of Certiorari on the appellees herein, by delivering the same to Jonathan Wallas and J. Levonne Chambers, counsel of record for said appellees located at 951 S. Independence Boulevard in the City of Charlotte, North Carolina.

W. A. Watts
W. A. Watts

Subscribed and sworn to before me, at Charlotte, North Carolina this 8th day of August, 1975.

Dolores B Ballard
Notary Public

My commission expires: June 15, 1976.

APPENDIX TO PETITION

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 74-2240

Local 660, International Association of Firefighters, an unincorporated labor organization, et al,

Appellees,

versus

City of Charlotte, a municipal corporation, the Charlotte City Council, the governing legislative body of the City of Charlotte, et al,

Appellants.

Appeals from the United States District Court for the Western District of North Carolina, at Charlotte.

Upon motion of the appellants, and the response thereto, by counsel,

IT IS ORDERED that the mandates in the

above-entitled cases be, and they are hereby stayed pending application of the appellants in the Suprome Court of the United States for a writ of certiorari to this Court, provided the applications are filed within the time permitted by law.

For the Court-By Direction.

/s/William K. Slate II
Clerk

Filed: July 21, 1975

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 74-2240
NO. 74-2241
NO. 75-1126

Local 660, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, et al,
Plaintiffs-Appellees*

vs.

CITY OF CHARLOTTE, et al,
Defendants-Appellants.

Appeal from the United States District Court for the Western District of North Carolina, Charlotte Division. James B. McMillan, Judge.

Argued May 5, 1975 Decided June 17, 1975

Before RUSSELL and FIELD, Circuit Judges, and THOMSEN, Senior District Judge

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Jonathan Wallas (J. LeVonne Chambers on brief) for Plaintiffs-Appellees; W. A. Watts (Henry W. Underhill, Jr., and H. Michael Boyd on brief) for Defendants-Appellants.

* Local 660 is a plaintiff-appellant. See note 1 below.

THOMSEN, District Judge

Local 660, International Association of Firefighters, and five officers of Local 660, as such officers and individually, brought this action against the City of Charlotte, the Charlotte City Council and members of the Council, as such and individually, to require defendants to withhold their union dues and the dues of other members of Local 660 who make a similar request. After a hearing on cross-motions for summary judgment, at which both sides presented affidavits, the district court dismissed the union as a plaintiff, but granted the motion of the individual plaintiffs.[1] The order provided: "So long as defendants continue, without clearly stated and fair standards, to withhold moneys from the paychecks of City employees for other purposes, organizations and entities not specifically required by law, defendants *** are enjoined from refusing to withhold moneys from the paychecks of the individual plaintiffs to be paid to Local 660." Defendants have appealed from that order and from the denial of their 60(b)(3) motion, which was based upon a factual error in one of the affidavits which the district court and we believe to be immaterial.[2]

1/ The union appealed from that part of the order which dismissed it as a plaintiff, but has shown no reason for reversal.

2/ The error was in the name of an insurance company which refused to issue a group policy unless the withholdings were allowed.

The district judge made the following material findings: that defendants now, upon request, withhold moneys from the paychecks of City employees, to be paid to various charities, government subdivisions, private insurance companies and other beneficiaries; that no written standards or guidelines exist to determine when employees of the City may have moneys deducted from their paychecks; that defendants' practice has been to allow withholdings required by law, withholdings available to all City employees and withholdings available to all employees within a single employee unit, such as the Fire Department; that defendants have not denied any requests for withholdings from any persons or organizations in the Fire Department within the past ten years except plaintiff's requests; and that refusal of defendants to withhold $4.00 a month, as requested, made it impossible for plaintiffs and their association to obtain group insurance and difficult for them to provide other lawful benefits.

We recognize that defendants may exercise wide discretion in deciding what requests are to be honored. This discretion, however, may not be exercised arbitrarily or to promote an impermissible objective. Griffin v. School Board of Prince Edward County, 377 U.S. 218 (1964). The authorities cited by defendants are distinguishable, either because the request for withholding arose and was denied in the context of collective bargaining, or because a rational classification was established.

A state statute (N.C.G.S. §95-98) prohibits contracts between governmental agencies or units (including cities) and labor unions as bargaining agents for public employees; but that statute does not justify denying the request for withholding made by plaintiffs in this case. The order appealed from will be affirmed.[3]

Defendants may hereafter adopt reasonable, objective standards for determining which requests for withholding will be granted and which denied. If, on the basis of a rational classification made under such standards, defendants determine that such withholding requests as are involved in this case should be denied, the defendants may move to reopen the case in the district court.

Affirmed.

3/ Jurisdiction was invoked under 28 U.S.C. 1331 and 1343, and 42 U.S.C. 1983, to redress rights secured by the First, Ninth and Fourteenth Amendments. None of the defendants has challenged the jurisdiction of the district court, but we note that a municipal corporation is not a "person" within the meaning of 42 U.S.C. 1983. City of Kenosha v. Bruno, 412 U.S. 507 (1973). It is not necessary to decide whether jurisdiction over the City and the Charlotte City Council as such can be sustained under any of the other jurisdictional grounds invoked, because the members of the Council were sued individually, and the court had jurisdiction to grant the relief requested against them. Harper v. Kloster, 486 F.2d 1134 (4 Cir. 1973).

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA

CHARLOTTE DIVISION
C-C-73-236

LOCAL 660, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, et al., Plaintiffs, -vs- THE CITY OF CHARLOTTE, et al., Defendants.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

INTRODUCTION

A hearing was conducted on July 8, 1974, to consider all pending matters, including the defendants' motions to dismiss, the defendants' motion for summary judgment, and the plaintiffs' motion for summary judgment.

Based upon the pleadings, affidavits, discovery materials and arguments of counsel, the court makes findings of fact and conclusions of law and renders the following order:

FINDINGS OF FACT

1. (a) Plaintiffs R. L. Middleton, W. M. Brawley, D. F. Black, M. L. Knight, and R. D. McCall, are all members and officers of Local

660, International Association of Fire Fighters, and members of the Charlotte Fire Department. The individual plaintiffs brought this action to require the defendants to withhold moneys from their paychecks for the benefit of their association, Local 660, so long as the defendants continue to withhold moneys from employees' checks for other purposes and organizations. The plaintiffs contend that the refusal of the defendants to withhold moneys (or dues) as so requested has made it impossible for them and their association to obtain certain lawful benefits (e.g., insurance benefits), and has made it difficult for them to provide other lawful benefits (e.g., the assistance of counsel). The defendants do not dispute that their action has this effect upon plaintiffs.

(b) Plaintiff, Local 660, International Association of Fire Fighters, is an unincorporated labor organization. Some 351 of the 543 uniformed employees of the Charlotte Fire Department, including the individual plaintiffs, are members of Local 660. Since 1970, a majority of the uniformed firemen in Charlotte have been members of Local 660, which was formed, among other things, to enable its members to join together to work for all lawful mutually beneficial purposes, including the purchasing of insurance on a favorable "group" basis, and the retention of legal counsel. Membership in Local 660 is presumptively open to all Charlotte firemen.

2. The defendant, City of Charlotte, is a municipal corporation of the State of North Carolina charged by state law with general

supervision of the Fire Department of the City of Charlotte, North Carolina, including the establishment of wages and salaries, rates of pay, hours of employment and various rules and regulations.

3. The defendant, Charlotte City Council, is a governing body whose members are charged under North Carolina law with the establishing of rules and regulations and policies for the operation of the various departments and agencies of the City of Charlotte, including the Charlotte Fire Department.

4. The individually named defendants are all duly elected or appointed members of the Charlotte City Council. They are sued in their capacity as members of the City Council and in their individual capacities.

5. Since 1970, the plaintiffs as an organization and as individual members of Local 660, have requested the defendants to check off their union dues. This request has been denied each year. The present monthly dues of Local 660 are $4.00.

6. The defendants presently, upon request, withhold or "check off" moneys from the paychecks of City employees to be paid to various charities, government subdivisions, private insurance companies and other beneficiaries. The moneys thus checked off are delivered directly to various organizations or entities for the following purposes:

(a) Federal Income Tax
(b) State Income Tax
(c) North Carolina Firemen Retirement
(d) North Carolina Local Government Retirement System
(e) Medical Insurance (Life of Virginia)
(f) Life Insurance (Life of Virginia)
(g) United States Savings Bonds
(h) United Way (Mecklenburg and Union Counties)
(i) Firemen Benefit Fund (Lincoln National Life)
(j) Charlotte Fire Department Credit Union
(k) Aetna Deferred Compensation Program
(l) Charlotte Fire Department Voluntary Pledge Fund
(m) City-County Tax Levy
(n) State Tax Levy

7. Defendants have not denied any requests for payroll deductions from any persons or organizations in the Fire Department within the past ten years except the plaintiffs' requests. No written standards or guidelines exist to determine when City employees may have moneys deducted from their paychecks. The defendants' practice has been to allow check offs from employees' pay to organizations or programs as required by law or where the check off option is available to all employees within a single employee unit such as the Fire Department. Defendants have not allowed check off options serving only single employees or programs which are not available either to all City employees or

to all employees engaged in a particular section of City employment.

8. The plaintiffs have recently conducted negotiations to obtain a group life insurance plan for the membership of Local 660. Two life insurance companies (Jefferson Standard Life Insurance Company and Vulcan Life Insurance Company) have informed the plaintiffs that in order for the membership of Local 660 to be eligible for a group life insurance plan it would be necessary for the plaintiffs to obtain dues check off from the City of Charlotte.

9. The refusal of the defendants to withhold the dues of the individual plaintiffs herein and other members of Local 660 prevents the plaintiffs and other Fire Department employees from associating together for the purpose of obtaining group life insurance and substantially hinders plaintiffs and other Fire Department employees from associating together for the purpose of engaging legal counsel to promote their mutual interests.

10. The City's payroll deduction procedure is computerized. Individual employees are routinely given a computer card appropriate for a particular deduction. They sign the cards and they are returned to the general office for processing. Withholding union dues from the wages of individual firemen would be no more difficult than processing the deductions for any of the presently existing programs for which payroll deductions are made.

11. The defendants have suggested no compelling state interest in refusing to withhold moneys for the benefit of Local 660 when requested to do so by individually named plaintiffs, nor any rational basis for the refusal.

12. Under the circumstances, the defendants' refusal to withhold the moneys requested from the paychecks of the individual Charlotte firemen is an arbitrary and standardless infringement of the individual plaintiffs' rights to equal protection of laws, so long as defendants make payroll deductions for other purposes.

CONCLUSIONS OF LAW

1. Although plaintiffs have no right per se to have moneys withheld from their paychecks for the benefit of Local 660, nevertheless, once the defendants offer the benefits of withholding to certain organizations and entities the defendants, under the Fourteenth Amendment, must administer such a withholding program in a fair and equitable manner. Griffin v. School Board v. Prince Edward County, 377 U.S. 218 (1964).

2. There is no difference in the state interests involved in the various payroll deductions which justifies the discriminatory withholding policy. The refusal of the defendants to withhold or check off moneys when requested to do so by the individual plaintiffs for the benefit of Local 660 constitutes a violation of the individual plaintiffs' rights to equal protection of laws under the Fourteenth Amendment

to the Constitution of the United States.

3. Although defendants are under no duty to enter into collective bargaining agreements or other contracts with Local 660 or with the individual plaintiffs, the individual plaintiffs are nevertheless entitled to equal treatment with respect to the payroll deductions they request. (Desire to discourage municipal labor organizations including Local 660 would of course be an impermissible reason for refusing to withhold moneys from the paychecks of the individual plaintiffs.)

4. The defendants have offered no reasonable alternatives to their absolute refusal, such as establishing reasonable regulations dealing with withholding to be applied to all persons seeking such administrative assistance.

5. North Carolina General Statutes §95-98, cited by the defendants as authority prohibiting the requested relief, does not apply to this case; no contracts or agreements are contemplated between defendants and Local 660.

6. The motions of the defendants to dismiss with respect to Local 660 should be granted since the Fourteenth Amendment as cited above applies under the facts of this case, primarily to the individual plaintiffs.

ORDER

IT IS, THEREFORE, ORDERED:

1. The motion to amend the complaint and the motion to substitute parties filed by the plaintiffs on July 3, 1974 are allowed.

2. The motions of the defendants to dismiss with respect to the plaintiff Union are allowed. All other motions of the defendants are denied.

3. The motion of the individual plaintiffs for summary judgment is granted.

4. So long as the defendants continue, without clearly stated and fair standards, to withhold moneys from the paychecks of City employees for other purposes, organizations and entities not specifically required by law, the defendants, their agents, successors, employees and any persons acting in concert with the defendants or at their direction are enjoined from refusing to withhold moneys from the paychecks of the individual plaintiffs to be paid to Local 660.

This 4th day of September, 1974.

/s/ James B. McMillan
James B. McMillan
United States District Judge

Filed: Sept. 5, 1974
Hon. J. Toliver Davis, Clerk
U. S. Dist. Court, Charlotte, N. C.